

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

KNIGHT FIRST AMENDMENT INSTITUTE
AT COLUMBIA UNIVERSITY,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, et al.

Defendants.

Civil Action No. 1:17-CV-07572-ALC

**DECLARATION OF ICE ACTING FOIA OFFICER FERNANDO PINEIRO
REGARDING ICE FOIA OFFICE WORKLOAD AND RESOURCES**

I. INTRODUCTION

I, Fernando Pineiro, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am the Acting FOIA Officer of the U.S. Immigration and Customs Enforcement (“ICE”) Freedom of Information Act (“FOIA”) Office (the “ICE FOIA Office” or “ICE FOIA”). I have held this position since July 10, 2019 and am the ICE official immediately responsible for supervising ICE responses to requests for records under the Freedom of Information Act, 5 U.S.C. § 552, the Privacy Act, 5 U.S.C. § 552a (the “Privacy Act”), and other applicable records access statutes and regulations. Prior to this position, I was the Deputy FOIA Officer of the ICE FOIA Office from December 29, 2013, to July 9, 2019, and prior to that I was the FOIA Officer for three years at the Office for Civil Rights and Civil Liberties (“CRCL”) at the U.S. Department of Homeland Security (“DHS”).

2. My official duties and responsibilities include the general management, oversight, and supervision of the ICE FOIA Office, which is responsible for receiving, processing, and

responding to all FOIA, 5 U.S.C. § 552, and Privacy Act, 5 U.S.C. § 552a, requests received at ICE. In that capacity, I manage and supervise a staff of ICE FOIA Paralegal Specialists, who report to me regarding the processing of FOIA and Privacy Act requests received by ICE, as well as the status, processing, and productions of ICE's federal FOIA litigations. In connection with my official duties, I am familiar with ICE's procedures for responding to requests for information pursuant to provisions of FOIA and the Privacy Act. In addition to responding to requests for information, I am also familiar with ICE FOIA's workload as well as the supporting metrics regarding the office's capabilities around processing and productions.

3. I make this declaration in my official capacity based on my personal knowledge, my review of records kept by ICE in the ordinary course of business, and information provided to me by other ICE employees in the course of my official duties.

II. CURRENT STATISTICS REGARDING FOIA REQUESTS SUBMITTED TO ICE

4. As of August 23, 2021, the ICE FOIA Office was processing approximately 3,775 open FOIA requests. As of August 23, 2021, there was a backlog of 3,225 cases and there are 197 open litigations.¹ As of the date of this declaration, there were 197 cases in litigation.

5. Beginning in fiscal year ("FY") 2018, the ICE FOIA Office experienced a substantial and dramatic increase in the number of FOIA requests received by ICE compared to previous years. In FY 2015, the ICE FOIA Office received 44,748 FOIA requests; 63,385 FOIA requests were received in FY 2016. The number of requests received decreased in FY 2017 to 47,893 but was then followed by a record high of 70,267 FOIA requests in FY 2018. In FY 2019,

¹ Backlog cases are those that have been pending for over 20 days.

that number increased even further to a total of 123,370 requests received. In FY 2020, the ICE FOIA Office received 114,475 requests.

6. In short, between FY 2017 and FY 2020, the ICE FOIA Office experienced approximately a 240% increase in FOIA requests.

III. ICE FOIA OFFICE'S STAFF LEVELS AND WORKLOAD

7. In addition to the increasing volume of FOIA requests, ICE has also experienced an increase in the complexity of FOIA requests, both in terms of volume and substance. For example, it is now not uncommon for ICE to receive FOIA requests with 50 to 60 subparts comprising several pages, requiring searches of numerous program offices, and encompassing thousands of pages or records to review and process. These FOIA requests take considerably longer to process due to the extensive searches that are usually required, as well as the intricacies of the documents and/or data produced. In FY 2019, one FOIA requester alone – a data clearing house – filed more than 370 FOIA requests seeking extensive data extracts. In FY 2020, the same requester filed more than 480 similar FOIA requests.

8. As a result, ICE FOIA Office's overall workload in comparison with the same date for FY 2017 has more than doubled. In response to the increasingly heavy workload, the ICE FOIA Office has adopted the court-sanctioned practice of generally handling backlogged requests on a "first-in, first-out basis," which ensures fairness to all FOIA requestors by not prioritizing one request over another. For FY2020, the ICE FOIA Office closed 79,081 cases and 17,060 referrals from USCIS.

9. The ICE FOIA Office currently has FOIA specialists dedicated to processing FOIA requests solely at the administrative level. The processors are responsible for responding to the

original FOIA requests and, if necessary, reprocessing remands on appeal. In FY 2019, these FOIA processors completed and closed out 65,213 FOIA requests.

10. Additionally, the COVID Pandemic has negatively impacted the ICE FOIA Office. The ICE FOIA Office has many unfilled positions due to the difficulty in the hiring process during COVID-19 operations, further impacting the ICE FOIA Office's resource capabilities.

IV. WORKLOAD OF THE ICE FOIA LITIGATION PROCESSING UNIT

11. A consequence of the increasing complexity and volume of ICE FOIA's workload (see paragraphs 5-9) is that more of those FOIA requests become subject to litigation in U.S. District Court.

12. The ICE FOIA Litigation Processing Unit is currently processing 197 active FOIA litigations as of the date of this declaration. There are currently 67 court-ordered FOIA litigation cases that have rolling productions, which yield a monthly litigation review and processing page count of between 28,000-35,000 pages, with a total of 11,000-18,000 pages being released every month. ICE's normal processing rate is 500 pages per month, per case. Additionally, there are cases that are added each month that increase the case list and resulting productions. With the monthly additions, several full-time paralegals (one of whom is currently on extended leave) will be required to process nearly 40,000 pages per month. These page-count numbers do not take into account the more than 60 additional FOIA lawsuits that require a single production as opposed to a rolling production.

13. The ICE FOIA Litigation Processing Unit also drafts, assigns, and tracks any and all searches for responsive documents in response to FOIA litigations. These search taskings can span dozens of ICE program and field offices and require the Unit to keep track of hundreds of thousands of responsive documents, as well as all of the offices' search documentation.

14. The ICE FOIA Litigation Processing Unit also has other duties, in addition to processing documents pursuant to litigation. For example, they also prepare various reports, process Congressional inquiries, redact Prison Rape Elimination Act (“PREA”) and Office of Detention Oversight (“ODO”) reports, send out FOIA (b)(4) submitter notices on relevant cases, and handle consults and referrals from other agencies as they come in. The Unit also supports attorneys in the ICE Office of the Principal Legal Advisor on federal FOIA litigations, assisting in the creation of Vaughn indexes, declarations, and other necessary court filings.

15. The members of the ICE FOIA Litigation Processing Unit also manage a host of other administrative duties, including (but not limited to) monitoring the ICE FOIA inbox (which receives 12,000-18,000 emails annually), processing all classified consults and referrals, scheduling productions, preparing clearance emails, and preparing other correspondence to requesters.

16. In total, each member of the ICE FOIA Litigation Processing Unit can process on average 100-300 pages per day, depending on the complexity of the documents, and still keep up with their overall job duties.

17. In order to meet its obligations for all cases in litigation, and to ensure that all of the FOIA matters progress so that other requesters are not unfairly impacted, the ICE FOIA Office typically processes no more than 500 pages per month for each litigation case. Any significant increase in one matter would hinder ICE FOIA’s ability to process records for productions in other matters.

V. ICE FOIA'S PROPOSED PRODUCTION SCHEDULE

18. In negotiating with Plaintiff, the ICE FOIA Office initially offered to process at least 500 pages per month on a rolling basis through completion of the latest production from our supplemental searches, which is approximately 47,557 pages. Plaintiffs rejected that proposal. In an effort to try and reach an agreement on this case, the ICE FOIA Office offered to reallocate resources and shift workload to allow processing for 700 pages per month on a rolling basis, starting no later than September 30, 2021, and subsequent productions following on the 30th of each month thereafter. Unfortunately, Plaintiffs rejected that offer as well, and the parties have not reached an agreement with respect to a production schedule.

VI. JURAT CLAUSE

I declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief. Signed this __th day of September 2021.

Fernando Pineiro, Acting FOIA Officer
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